

REMARKS

1. Applicant thanks the Examiner for pointing out the allowable subject matter of Claims 1 – 29 and 49 – 50.

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2. It should be appreciated that Applicant has elected to amend Claims 30, 51, 52, 54 and 55 solely for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent Business Goals, 65 Fed. Reg. 54603 (9/8/00). In making such cancellations and amendment, Applicant has not and does not in any way narrow the scope of protection to which Applicant considers the invention herein to be entitled. Rather, Applicant reserves Applicant's right to pursue such protection at a later point in time and merely seeks to pursue protection for the subject matter presented in this submission.

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3. Claims 30 – 48 and 51 – 56 stand rejected under 35 USC § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter of the invention. Specifically, the Examiner finds that the term “minimize” in Claim 30, 51, 52, 54 and 55 is a relative term. While Applicant believes the Claims to be definite as they stand, in the interest of moving prosecution of the application forward, Applicant has amended claims 30, 51, 52, 54 and 55 as below.

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A. Claims 30, 51, and 54 have been amended to describe “minimizing variation in placement of a tissue measurement site . . . so that substantially the same region is sampled at each measurement.” Support for the amendment is found in United States Patent No. 6,415,167 issued from United States Patent Application Ser. No. 09/563,782, one of the parent applications to the present application, at least at Col. 2, line 60 to line 61.

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B. Claims 30, 51, and 55 have been amended to describe “minimizing variation in pressure applied by an optical coupling means to said tissue measurement site . . . so that substantially the same volume of tissue is displaced at each measurement.”

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Support for the amendment is found also in the '167 patent, at least at Col. 2, line 61 to line 62.

C. Claims 30, 52, and 54 have been amended to describe "minimizing surface temperature transients at said tissue measurement site . . . so that temperature remains substantially constant for each measurement." Support for the amendment is found also in the '167 patent, at least at co. 4, line 14 to line 19.

4. Applicant contends that the Claims 30 - 48 and 51 - 58 as amended particularly point out and distinctly claim the subject matter of the invention. As amended, each of the minimizing steps clearly defines the result to be attained by minimizing the particular parameter. Furthermore, the amendments harmonize with Applicant's previous statement that one having an ordinary level of skill in this art would recognize the term "minimize" to mean "substantially eliminate."

CONCLUSION

In view of the foregoing, the application is deemed to be in allowable condition. Therefore, the Examiner is earnestly requested to withdraw all rejections and allow the application to pass to issuance as a U.S. Patent. Should the Examiner have any questions concerning the Application, he is urged to contact Applicant's attorney at the telephone number given below.

Respectfully submitted,


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